

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 04-3781

---

ANTONIO ALEXANDER,

Appellant

v.

SALLY A. GENNARINI;  
EDWARD J. KLEM;  
SHARON M. BURKS

---

On Appeal From the United States District Court  
For the Middle District of Pennsylvania  
(M.D. Pa. Civ. No. 04-cv-1964)  
District Judge: Honorable Malcolm Muir

---

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)  
May 12, 2005

Before: ALITO, McKEE and AMBRO, Circuit Judges

(Filed August 2, 2005)

---

OPINION

---

PER CURIAM

Appellant Antonio Alexander, a prisoner incarcerated at the State Correctional

Institution in Dallas, Pennsylvania, filed a pro se civil rights action under 42 U.S.C. § 1983, alleging that his due process rights were violated when Defendants, employees at the State Correctional Institution at Mahanoy, delayed the delivery of a package that had been sent to him, thus depriving him of his personal property.<sup>1</sup> Alexander sought injunctive relief and punitive damages. The United States District Court for the Middle District of Pennsylvania dismissed his complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Alexander appeals, again pro se.

Our review of the District Court's dismissal under § 1915(e)(2)(B)(i) is plenary.<sup>2</sup> See Mitchell v. Horn, 318 F.3d 523, 530 (3d Cir. 2003); Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). We can affirm the District Court on any basis supported in the record. See Fairview Township v. EPA, 773, F.2d 517, 524 n.15 (3d Cir. 1985). As the complaint does not appear factually frivolous, we accept as true its factual allegations and all reasonable inferences that can be drawn from them. See Denton v. Hernandez, 504 U.S. 25, 32 (1992); Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

To bring a claim under 42 U.S.C. § 1983, Alexander must demonstrate that, while acting under color of state law, Defendants deprived him of a right, privilege, or immunity protected by the Constitution or by a federal statute. See Carter v. City of Philadelphia,

---

<sup>1</sup>Inasmuch as we are writing only for the parties, we need not set forth the factual and procedural background of this matter, except as it may be helpful to our discussion.

<sup>2</sup>Although a dismissal without prejudice is ordinarily not appealable, such dismissals pursuant to § 1915 are appealable. See Deutsch v. United States, 67 F.3d 1080, 1083 (3d Cir. 1985).

989 F.2d 117, 119 (3d Cir. 1993). As the District Court correctly noted, to be liable under § 1983, a defendant must have personal involvement in the alleged wrongdoings. See Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Section 1983 liability cannot be found solely on the basis of respondeat superior. See id. The District Court properly dismissed Alexander's claims as against Defendants Klem and Burks, as the allegations related to these defendants merely assert their involvement in the post-incident grievance process.

The District Court's dismissal of the claims against Defendant Gennarini, the only remaining defendant, was likewise proper. A prisoner's due process claim based on random and unauthorized deprivation of property by a state actor is not actionable under § 1983, whether the deprivation is negligent or intentional, unless there is no adequate post-deprivation remedy available. See Parratt v. Taylor, 451 U.S. 527, 542 (1981) overruled on other grounds by 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984). As noted by the District Court, Alexander availed himself of an adequate post-deprivation remedy when he utilized the prison's internal grievance system. See Tillman v. Lebanon County Correctional Facility, 221 F.3d 410, 422 (3d Cir. 2000). Alexander could also have filed a state tort suit for conversion of property. See Hudson, 468 U.S. at 535.

On appeal, Alexander argues that the District Court did not address his claims under the First or Eighth Amendments. Alexander fails to specify how his rights under either of these Amendments were violated. However, as pro se pleadings must be liberally

construed, we attempt to glean his arguments from the complaint. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

Alexander alleges “intentional interference with a prisoner’s mail rights.” To the extent that this allegation can be construed as a free speech claim, we recognize that prisoners retain a constitutionally protected right to reasonable correspondence with the outside world. See Procunier v. Martinez, 416 U.S. 396, 418 (1974), overruled on other grounds, 490 U.S. 401 (1989). However, a single instance of damaged or withheld mail does not constitute a First Amendment violation. See Bieregu v. Reno, 59 F.3d 1445, 1452 (3d. Cir. 1995), overruled on other grounds, 518 U.S. 343 (1996). Alexander’s complaint fails to allege any facts which could support a valid claim under the Eighth Amendment.

We will dismiss this appeal pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), as it is based on an indisputably meritless legal theory. See Neitzke v. Williams, 490 U.S. 319, 325 (1989).